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SUPREME COURT OF THE UNITED STATES.

No. 109.

AMOS WADE, PL'FF,

vs.

JACOB R. LEROY AND HENRY E. PIERREPONT.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE U. S. FOR THE SOUTHERN DIST. OF NEW YORK.

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GIDEON, print.

693.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, John W. Nelson, clerk of the circuit court of the United States of America for the southern district of New York, [L. S.] in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the said United States the eightieth.

J. W. NELSON, *Clerk.*

United States Circuit Court for the southern district of New York.

AMOS WADE
vs.
JACOB R. LEROY &
HENRY E. PIERREPONT.

This cause came on to be tried before their honors, Judges Nelson and Betts, and a jury, at a circuit court held for the southern district of New York, at the city hall, in the city of New York, on the fifteenth day of November, one thousand eight hundred and fifty-four.

This is an action on the case to recover damages for a personal injury alleged to have been sustained by the plaintiff in crossing the ferry from the city of Brooklyn to the city of New York, by the carelessness and negligence of the defendants, their agents and employees. It appeared at the trial that the plaintiff was a resident of Newborn, in the State of North Carolina, and was temporarily in the State of New York at the time of the alleged injury.

The declaration was in the words following, that is to say:

Of October term, to wit, of the tenth day of February, one thousand eight hundred and fifty-three—

Circuit Court of the United States for the southern district of New York.

STATE OF NEW YORK,
Southern district of New York, ss:

Amos Wade, plaintiff, who is a citizen and resident of the State of North Carolina, by Newton & Reed, his attorneys, complains of Jacob

R. Leroy and Henry E. Pierrepont, defendants, who are citizens and residents of the State of New York, being in custody, &c., of a plea of trespass on the case.

For that, whereas the said defendants, before and at the time of committing the grievances hereinafter mentioned, were lessees, owners, and proprietors of a certain ferry, ferry-docks and bridges, and appurtenances, and of certain steam ferry-boats, sailing and plying on said ferry, between the cities hereinafter mentioned, for the carriage, conveyance and transportation of passengers from the city of Brooklyn, in the county of Kings, in the State of New York, at or near the foot of Fulton street, in said city, to the city of New York, in the State aforesaid, at or near the foot or end of Fulton street, in said city, for hire and reward, to the said defendants in that behalf, to wit, in the city, county and State aforesaid, in the southern district of New York, in the United States of America, and within the jurisdiction of this court; and the said defendants being such lessees, owners and proprietors of the said ferry, ferry-docks, bridges, appurtenances, and ferry-boats as aforesaid, thereupon, heretofore, to wit, on the ninth day of December, one thousand eight hundred and fifty-two, to wit, at the city, county and State of New York, in the southern district of New York aforesaid, the said plaintiff, at the special instance and request of the said defendants, became and was a passenger in one of the ferry-boats of the said defendants, to wit, a certain ferry-boat known as the Gowanus, to be safely and securely carried, conveyed and transported therein and thereby, from the foot of Fulton street, in the city of Brooklyn aforesaid, to the foot of Fulton street, in the city of New York aforesaid, for a certain fare or reward to the said defendants in that behalf; and the said defendants then and there received the said plaintiff as such passenger as aforesaid, and thereupon it then and there became and was the duty of the said defendants to use due and proper care that the said plaintiff should be safely and securely carried, conveyed and transported by and upon the said ferry-boat, from the foot of Fulton street, in the city of Brooklyn aforesaid, to the foot of Fulton street, in the city of New York aforesaid.

Yet the said defendants, not regarding their duty in that behalf, did not use due and proper care that the said plaintiff should be safely and securely carried, conveyed, and transported by and in the said ferry-boat from the city of Brooklyn aforesaid to the city of New York aforesaid, but wholly neglected so to do; but by their agents, servants, employees, and pilots, so unskilfully, negligently, and carelessly managed and guided, and piloted the said ferry-boat, that the said ferry-boat, on the day and year aforesaid, and while the said plaintiff was a passenger thereon as aforesaid from the said city of Brooklyn to the city of New York, ran so forcibly and violently into, upon, and against another certain ferry-boat then and there belonging to the said defendants, and which said last mentioned boat was at the time aforesaid lying at or near, or attached to, the ferry-dock or bridge of the defendants, at the foot of Fulton street, in the said city of New York, in the

said southern district of New York; that by means thereof a certain metal or iron ring, or fastening, which was fastened into and upon, and belonged to, the said ferry-boat Gowanus, was violently and forcibly knocked and broken off from the said ferry-boat, and propelled and thrown thereby, with great force and violence, against the ear and head of the plaintiff, then and there being a passenger in and upon the said ferry-boat Gowanus, as aforesaid, to wit, at the place last aforesaid, and by means thereof a part of the ear of the said plaintiff was cut and torn off, and the head and ear of said plaintiff were very severely bruised, wounded, and lacerated, and the brain of the said plaintiff was thereby affected and injured, and his memory and understanding injured and impaired thereby; and by means thereof he has lost and been deprived of the sense of hearing in his said ear; and also, by means of the premises, the said plaintiff became and was insensible for a considerable time, to wit, for the space of six hours thereafter, and his life for a long time was despaired of; and by means of said premises he became and was sick and sore, and suffered great mental and bodily pain and anguish for a long space of time thereafter, to wit, from thence hitherto; and by means of the said premises the said plaintiff will hereafter suffer much mental and bodily pain and anguish, and by means thereof has suffered, and will suffer, much mortification and loss of the esteem of his neighbors and fellow-citizens from the loss of his said ear; and by means of the said premises the said plaintiff has been hindered and prevented for a long space of time, to wit, from thence hitherto, from transacting and attending to his necessary and lawful affairs by him during all that time to be performed and transacted, and lost, and was deprived of divers great gains, profits, and advantages, which he might and otherwise would have derived and acquired; and thereby, also, the said plaintiff was forced and obliged to, and did then and there pay, lay out, and expend divers large sums of money, amounting in the whole to the sum of one thousand dollars, in and about endeavoring to be cured of the said bruises and injuries, and loss of hearing so received and caused as aforesaid; and, also, thereby the said plaintiff was confined and detained at the city of New York, at a great distance from his residence, for the space of eight weeks, and during that time incurred great expenses, amounting in the whole to one thousand dollars, in and about his necessary support and maintenance, to wit, at the city, county, and State of New York aforesaid, in the southern district of New York aforesaid.

Second Count.—And whereas, also, heretofore, to wit, on the day and year aforesaid, at the city, county and State of New York aforesaid, and within the southern district of New York and the jurisdiction of this court, the said plaintiff, at the special instance and request of the said defendants, became and was a passenger by a certain other ferry-boat of the said defendants, called the "Gowanus," to be safely and securely carried and conveyed thereby and therein from the city of Brooklyn aforesaid to the city of New York aforesaid, for a certain fare or reward to the said defendants in that behalf, and the said

defendants then and there received the said plaintiff as such passenger as foresaid, and thereupon it then and there became and was the duty of the said defendants to use due and proper care that the said plaintiff should be safely and securely carried and conveyed by and upon the said ferry-boat from the city of Brooklyn aforesaid to the city of New York aforesaid; yet, the said defendants not regarding their duty in that behalf, did not use due and proper care that the said plaintiff should be safely and securely carried and conveyed by and on the said ferry-boat from the city of Brooklyn aforesaid to the city of New York aforesaid, but wholly neglected so to do; but, by their agents, servants, employees and pilots, so unskilfully, negligently and carelessly managed, piloted, and guided the said ferry-boat on the day and year aforesaid, and while the said plaintiff was a passenger thereon as aforesaid from the said city of Brooklyn to the city of New York, that the said ferry-boat then and there ran against and into the dock or pier or bulkhead, on the south side of the ferry-dock or bridge of the said defendants, in the said city of New York, and was thereby prevented from sailing into her own proper dock and to the proper ferry-bridge or dock, and was thereby forced or impelled, with great force and violence, into, upon, and against another certain ferry-boat, then and there belonging to the defendants, and lying at or near or attached to another certain ferry-dock or bridge of the defendants, in the city of New York, in the said southern district of New York, and thereby the bow or end of the said ferry-boat Gowanus was driven and forced under the end or bow of the said other ferry-boat, then and there lying at or near or attached to the said ferry-bridge or dock as aforesaid, so that, by means thereof, a certain metal or iron ring or fastening, which was fastened into and upon, and belonged to the said ferry-boat "Gowanus," was violently and forcibly knocked and broken off from the said ferry-boat Gowanus, and propelled and thrown thereby with great force and violence against the ear and head of the plaintiff, then and there being a passenger in and upon the said ferry-boat Gowanus, as aforesaid, to wit, at the place last aforesaid, and by means thereof, a part of the ear of the said plaintiff was cut and torn off, and the head and ear of the said plaintiff was very severely bruised, wounded, and lacerated; and the brain of the said plaintiff was affected and injured, and his memory and understanding injured and impaired; and by means thereof, he has lost and been deprived of the sense of hearing in his said ear; and also, by means of the premises, the said plaintiff became and was insensible for a considerable time, to wit, for the space of six hours thereafter; and his life, for a long time, was despaired of; and by means of the premises, he became and was sick and sore and suffered great mental and bodily pain and anguish for a long space of time thereafter, to wit, from thence hitherto, and by means of the said premises the said plaintiff will hereafter suffer much mental and bodily pain and anguish, and by means thereof has suffered, and will suffer, much mortification and loss of esteem of his neighbors and fellow-citizens, from the loss of his said ear. And by means of the said premises, the said plaintiff has been

hindered and prevented, for a long space of time, to wit, from thence hitherto, from transacting and attending to his necessary and lawful affairs by him during all that time to be performed and transacted, and lost and was deprived of divers great gains, profits, and advantages, which he might and otherwise would have derived and acquired; and thereby also the said plaintiff was forced and obliged to, and did then and there pay, lay out and expend divers large sums of money, amounting in the whole to the sum of one thousand dollars, in and about endeavoring to be cured of the said bruises and injuries and loss of hearing, so received and caused as aforesaid; and also, thereby the said plaintiff was confined and detained at the city of New York, at a great distance from his residence, for the space of eight weeks, and during that time incurred great expenses, amounting in the whole to one thousand dollars, in and about his necessary support and maintenance, to wit, at the city, county, and State of New York, in the southern district of New York aforesaid.

Wherefore, the plaintiff saith that he hath sustained damage to the amount of twenty-five thousand dollars; and therefore he brings suit, &c.

The plea was the general issue. The plaintiff offered to prove, that before and up to and at the time of the alleged injury, the particular business in which he was engaged was that of a distiller and manufacturer of turpentine, and that he was largely and extensively engaged in that business.

To this evidence the defendants, by their counsel, then and there objected, on the ground that the plaintiff's declaration did not contain any specification of such business, or of its nature or extent, or any statement that the plaintiff was obliged to or did relinquish or abandon the same.

Whereupon the said judges differed in opinion as to the admissibility of such evidence.

And the counsel for the plaintiff also offered to prove, by a physician who had attended the plaintiff, that when the plaintiff, after his convalescence, left New York to return to North Carolina, he, the plaintiff, could not safely, in consequence of the said alleged injuries received by him, attend to any ordinary business or occupation, and that the witness deemed it imprudent and indiscreet for the plaintiff thenceforth to devote himself to any business.

To this evidence the defendants, by their counsel, then and there objected, on the same grounds as before stated:

And the said judges differed in opinion as to the admissibility of such evidence.

Whereupon it is ordered that the foregoing matters and division of opinion, which is made under the direction of the said judges according to the statute in such case made and provided, be certified by the said judges.